

TAM:MJB:all

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JUKEN WASHINGTON GORDON, : CIVIL ACTION NO. 1:CV-01-0331
Plaintiff :
 :
v. : (Rambo, J.)
 :
N. Gonzalez, et al., :
Defendants : Filed Electronically

**BRIEF IN SUPPORT OF DEFENDANTS' MOTION FOR LEAVE TO DEPOSE
PLAINTIFF PURSUANT TO FED. R. CIV. P. 30(a)(2)**

_____Defendants N. Gonzalez, S. Puckey, B. Shuman, J.A.

Candelora, G. Shuck, M. Peoria, and the United States, by and through their counsel, respectfully submit this brief in support of their motion for leave to take Plaintiff's deposition pursuant to Fed. R. Civ. P. 30(a)(2). Because Plaintiff is confined in prison and there is a need for discovery, Defendants seek leave to depose Plaintiff.

I. Procedural History

This is a Bivens¹ action filed by Juken Washington Gordon a federal prisoner who is currently incarcerated at the

¹ Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971).

Allenwood United States Penitentiary in White Deer, Pennsylvania ("USP Allenwood"). On February 22, 2001, Gordon filed a Complaint against the following Bureau of Prisons ("BOP") employees at USP Lewisburg: N. Gonzalez, Lieutenant; S. Puckey, Senior Officer Specialist; B. Shuman, ; J.A. Candelora, Senior Officer Specialist; G. Shuck, Senior Officer Specialist; M. Peoria, Physician's Assistant ("P.A.");² and the United States.

Defendants filed a motion to dismiss the Complaint or, in the alternative, for entry of summary judgment in favor of Defendants. By Order dated September 13, 2001, this Court granted Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment and closed this case.

Gordon appealed to the United States Court of Appeals for the Third Circuit, at Appeal No. 01-3676. The Third Circuit vacated the September 13, 2001 Judgment and remanded the case back to the District Court. On January 8, 2004, this Court issued a scheduling order setting May 7, 2004 as the deadline for discovery in this case. Trial is currently scheduled to begin on July 6, 2004.

In light of the need for discovery, Defendants have filed a motion seeking leave to depose the inmate Plaintiff pursuant to Fed. R. Civ. P. 30(a)(2). This brief is submitted in

² M. Peoria is a P.A. employed at USP Lewisburg who treated Gordon after the use of force incident of September 9, 2000. In Gordon's complaint, he refers to P.A. Peoria as "Dr. Poeria."

support of that motion in accordance with M.D. Pa. Local Rule 7.5.

II. Factual Background

Gordon's complaint alleges that he was assaulted by BOP employees and that BOP medical personnel failed to provide medical care for his injuries after the alleged assault. Gordon seeks "medical relief, declaratory and injunction relief, as well as \$5,000,000.00 dollars in compensatory and punitive damages," attorney's fees and costs and "any further relief this Honorable Court deems just proper [*sic*]."

III. Question Presented

Should Defendants be granted leave to depose the inmate Plaintiff?

Suggested Answer: Affirmative

IV. Argument

DEFENDANTS SHOULD BE GRANTED LEAVE TO DEPOSE THE INMATE PLAINTIFF.

Pursuant to Fed. R. Civ. P. 30(a)(2), "[a] party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2), if the person to be examined is confined in prison." Id. Gordon is confined in prison and, therefore, Defendants request the Court to grant them leave to depose Gordon.

In that Gordon is the Plaintiff in this case, he possesses relevant knowledge about the allegations in the

Complaint and the injuries and damages he claims to have suffered. By deposing Plaintiff, Defendants will be able to investigate Plaintiff's numerous allegations against numerous Bureau of Prisons employees.

Defendants' deposition of Plaintiff will enable Defendants to either present a motion for summary judgment based on the disputed facts or to appropriately prepare for trial so that Defendants and their counsel can address the issues and facts concisely and cogently. See Miller v. Bluff, 131 F.R.D. 698, 700 (M.D.Pa. 1990) (concluding that "[t]he plaintiff himself started this lawsuit and any defendant surely is entitled to take his deposition in conjunction therewith"). Accordingly, in order to prepare a dispositive motion and/or for trial, Defendants request leave to depose the inmate Plaintiff.

V. Conclusion

For the reasons stated above, Defendants request this Court to grant their motion to depose Juken Washington Gordon.

Respectfully submitted,

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Dated: March 31, 2004

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The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers. That on March 31, 2004, she served the attached

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by placing said copies in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Harrisburg, Pennsylvania.

Addressee:

David L. Glassman, Staff Attorney
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/s Anita L. Lightner
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